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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,535	09/29/2003	Alan F. Wolfschoon-Pombo	1410-67166	1849
48940	7590	01/21/2009		
FITCH EVEN TABIN & FLANNERY			EXAMINER	
120 S. LASALLE STREET			WONG, LESLIE A	
SUITE 1600				
CHICAGO, IL 60603-3406			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			01/21/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/673,535	<b>Applicant(s)</b> WOLFSCHOON-POMBO ET AL.
	<b>Examiner</b> Leslie Wong	<b>Art Unit</b> 1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on October 23, 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2,4 and 6-15 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2,4 and 10-15 is/are rejected.

7) Claim(s) 6-9 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/136/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

Claim 6 and dependent claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalan et al (US 3922375) in view of Klarenbeek et al (EP 0603981) for the reasons set forth in rejecting the claims in the last Office action.

Dalan et al disclose the preparation of a whey protein-stabilized fatty emulsion comprising acidifying an aqueous solution of whey protein, blending and homogenizing the acidified whey with fat to form an emulsion, and heat treating at 121°C (see entire patent, especially Examples 3, 5 and column 3, lines 28-40).

The claims differ as to the specific protein to fat ratios.

Klarenbeek et al disclose the preparation of a whey protein emulsion wherein the amounts of protein and fat are varied (see entire document, especially the abstract and Tables 2 and 3).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to adjust the protein to fat ratios in that of Dalan et al as taught by

Klarenbeek et al because the adjustment of protein and fat contents in emulsions is conventional in the art.

In the absence of a showing to the contrary, Applicant is using known components for their art recognized functions to obtain no more than expected results.

Applicant's arguments filed November 6, 2008 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not teach blending and homogenizing the acidified solution of whey protein with one or more fats to form a whey protein-stabilized fatty emulsion. Specifically Applicant argues that Example 5 of Dalan et al does not teach acidification of the protein solution.

Example 5 of Dalan et al teaches the preparation of a whey protein-stabilized fatty emulsion wherein the acidified whey protein solution of Example 3 is blended and homogenized with fat to form an emulsion. Dalan et al also teach heat treating at 121°C (see column 3, lines 28-40).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (571)272-1411. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Wong/  
Primary Examiner, Art Unit 1794

LAW  
January 15, 2009